

1 *E-filed on 9/8/06*

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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12 IN RE CYGNUS TELECOMMUNICATIONS
13 TECHNOLOGY, LLC, PATENT
14 LITIGATION

No. MDL-1423
This Order Applies to All Actions

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THIS ORDER RELATES TO:
All Actions

C-02-00142 RMW
C-02-00145 RMW
C-02-05437 RMW
C-03-03594 RMW
C-03-03596 RMW
C-03-03378 RMW
C-03-04003 RMW
C-04-03001 RMW
C-04-03365 RMW
C-04-04247 RMW
C-04-04359 RMW
C-06-03843 RMW
C-06-04295 RMW

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ORDER RE COST OF PRODUCING
DOCUMENTS IN CYGNUS'S POSSESSION

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As noted in this court's July 14, 2006 order, Cygnus's counsel possesses approximately twenty-five boxes of documents from past Cygnus infringement actions which defendants want scanned and placed in the parties' discovery depository. Cygnus objected that it should not have to pay for producing these documents. The court preliminarily approved defendants' suggestion that they be allowed to have these documents scanned at their expense, with the possibility that they at some point in the future be allowed to seek reimbursement of some of this cost from Cygnus.

1 Defendants' liaison counsel estimated that it would cost \$17,000 to scan the contents of the
 2 twenty-five boxes of documents subject to the limitations of the July 14, 2006 order. *See Report of*
 3 *Liaison Counsel* (July 17, 2006). At the August 18, 2006 hearing, the parties informed the court that
 4 counsel for defendant AT&T Corporation, Gregory B. Wood, had assumed the responsibility for
 5 sorting through these boxes and deciding what should be scanned. The estimate seems reasonable
 6 enough for the undertaking as limited by Mr. Wood's sorting. Defendants may therefore scan these
 7 documents at their own expense and move for reimbursement from Cygnus at some future date, if
 8 appropriate. The court tentatively finds that Cygnus should bear the expense of scanning those
 9 documents that is required to disclose pursuant to Fed.R.Civ.P. 26(a)(1).

10 Also at the August 18, 2006 hearing, counsel for Cygnus reported that another defendant
 11 wanted to independently examine the contents of the boxes for itself, although all participating in the
 12 hearing agreed to abide by Mr. Wood's decision on what documents should be scanned. No party
 13 was identified as objecting to this procedure. If any defendant other than AT&T wishes to examine
 14 these boxes, it must obtain court approval before doing so.¹

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17 DATED: 9/8/06


 RONALD M. WHYTE
 United States District Judge

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27 ¹ If counsel for the defendants in the newest additions to MDL proceedings before this court (those
 28 in cases C-06-03843 RMW and C-06-04295 RMW) object on the basis that they have not agreed to
 have Mr. Wood examine the documents in these boxes for them, they may apply to the court for
 permission to review the documents themselves.

1 **A copy of this order was mailed on _____ to:**

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Courtesy Copy:

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11 Counsel for plaintiff is responsible for ensuring that involved attorneys not on the above service list
12 receive a copy of this order, if necessary, and shall inform the court of any omissions.
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